

factors that will be used as the basis for selecting a source, so that an offer from FPI can be evaluated on the same basis as the contract or schedule holder; and

(B) Consider a timely offer from FPI.

(c) The procedures in paragraph (b) of this section do not apply if an exception in 8.605 applies and the purchase is made from a source other than FPI.

(d) In some cases where FPI and a JWOD participating nonprofit agency produce identical items (see 8.603), FPI grants a waiver to permit the Government to purchase a portion of its requirement from the JWOD participating nonprofit agency. When this occurs, the portion of the requirement for which FPI has granted a waiver—

(1) Shall be purchased from the JWOD participating nonprofit agency using the procedures in subpart 8.7; and

(2) Shall not be subject to the procedures in paragraph (b) of this section.

(e) For civilian agency purchases made using other than fiscal year 2004 appropriated funds, the following policy applies:

(1) Agencies shall purchase required supplies of the classes listed in the FPI Schedule at prices not to exceed current market prices following the ordering procedures at <http://www.unicor.gov>, unless a waiver is obtained in accordance with 8.604.

(2) If the contracting officer believes that the FPI price exceeds the market price, the matter may be referred to the cognizant product division identified in the FPI Schedule or to the FPI Washington office for resolution.

(f) Disputes regarding price, quality, character, or suitability of supplies produced by FPI, except for determinations under paragraph (b)(1) of this section, are subject to arbitration as specified in 18 U.S.C. 4124. The statute provides that the arbitration shall be conducted by a board consisting of the Comptroller General of the United States, the Administrator of General Services, and the President, or their representatives. The decisions of the board are final and binding on all parties.

#### 8.603 Purchase priorities.

FPI and nonprofit agencies participating in the Javits-Wagner-O'Day

(JWOD) Program (see subpart 8.7) may produce identical supplies or services. When this occurs, ordering offices shall purchase supplies and services in the following priorities:

(a) *Supplies.* (1) Federal Prison Industries, Inc. (41 U.S.C. 48).

(2) JWOD participating nonprofit agencies.

(3) Commercial sources.

(b) *Services.* (1) JWOD participating nonprofit agencies.

(2) Federal Prison Industries, Inc., or commercial sources.

#### 8.604 Waivers.

FPI may grant a waiver for purchase of supplies in the FPI Schedule from another source. FPI waivers ordinarily are of the following types:

(a) General or blanket waivers issued when classes of supplies are not available from FPI.

(b) Formal waivers issued in response to requests from offices desiring to acquire, from other sources, supplies listed in the FPI Schedule and not covered by a general waiver. Agencies shall process waiver requests in accordance with the procedures at <http://www.unicor.gov>.

#### 8.605 Exceptions.

Purchase from FPI is not mandatory and a waiver is not required if—

(a) The policy at 8.602(b) applies to the acquisition and—

(1) The contracting officer makes a determination that the FPI item of supply is not comparable to supplies available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery; and

(2) The item is acquired in accordance with 8.602(b)(4);

(b) Public exigency requires immediate delivery or performance;

(c) Suitable used or excess supplies are available;

(d) The supplies are acquired and used outside the United States;

(e) Acquiring listed items totaling \$2,500 or less; or

(f) Acquiring services.